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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

NATHANIEL BARNES, JR.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO. ________________
	)	
CITY WIDE INVESTIGATORS, INC.,	)	
SANTANDER CONSUMER	)	
USA, INC.,	)	
	)	
Defendants.	)	

NOTICE OF REMOVAL

COMES NOW defendant City Wide Investigators, Inc., ("Defendant") by and through its undersigned counsel, pursuant to the provisions of 28 U.S.C. §§ 1331, 1367, 1441 and 1446, appearing specially so as to preserve any and all defenses available under Rule 12 of the Federal Rules of Civil Procedure, any and all defenses under the federal laws of bankruptcy and specifically preserving the right to demand arbitration pursuant to contractual agreements and the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.*, and hereby gives notice of the removal of this action from the Circuit Court of Jefferson County, Alabama, to the United States District Court for the Northern District of Alabama, Southern Division. The other defendant has joined in and given its consent to this removal. A true and correct copy of its Consent to Removal is attached hereto as Exhibit "A." In support of this notice of removal, Defendant states as follows:

I. INTRODUCTION

1. On October 22, 2011, Plaintiff filed this action against Defendants Santander Consumer USA, Inc., ("Santander") and City Wide Investigators, Inc., ("City Wide") in the Circuit Court of Jefferson County, Alabama, as CV-2011-903780.

2. Plaintiff's complaint asserts numerous state and federal claims against Defendants. The allegations in Plaintiff's complaint center around alleged efforts by Defendants to collect a debt that was incurred by Plaintiff. Specifically, Plaintiff contends, *inter alia*, that Defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"). Plaintiff seeks recovery of statutory damages, actual damages, compensatory and/or punitive damages, attorney's fees, interest, costs and expenses.

3. This case is properly removable pursuant to 28 U.S.C. § 1441 because federal question jurisdiction is present. Section 1441 provides, in pertinent part:

> Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the constitution, treaties, or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendant is a citizen of the State in which such action is brought.

28 U.S.C. § 1441(a).

II. FEDERAL QUESTION JURISDICTION

4. According to 28 U.S.C. § 1331, "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

5. In addition, pursuant to 28 U.S.C. §1441(a), a defendant in a state court action may remove the action to federal court if the federal court has "original jurisdiction." Moreover, where the federal court has "original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States," removal is proper "without regard to the citizenship or residence of the parties." 28 U.S.C. § 1441(b).

6. The Complaint explicitly alleges claims against Defendant pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §§1692-1692p (the "FDCPA"). The Plaintiff's Complaint clearly states that "[t]his action arises out of the Defendants' repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq." (Compl. at ¶1.) The Plaintiff further asserts that he is "a 'consumer' under the FDCPA" and that "All Defendants are 'debt collectors' under the FDCPA," and alleges violations of the FDCPA on the part of Defendants. (Compl. at ¶¶ 13, 113, 144-146).

7. The FDCPA specifically provides that "[a]n action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy . . ." 15 U.S.C. §1692k(d). Further, actions brought in state court under the FDCPA are removable to the appropriate Federal District Court. *See, e.g., Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367, 1369-70 (11th Cir. 1998); *Lockhard v. Equifax, Inc.,* 163 F.3d 1259, 1264-65 (11th Cir. 1998).

8. Thus, it is clear that this Court has original subject matter jurisdiction over this action arising under the FDCPA pursuant to 28 U.S.C. §1331 and 15 U.S.C. §1692k(d), and removal is therefore proper under 28 U.S.C. §1441(a)-(b).

III. SUPPLEMENTAL JURISDICTION

9. This Court can exercise supplemental jurisdiction over Plaintiff's state law claims because these claims form part of the same case or controversy as Plaintiff's alleged FDCPA and FCRA violations. The supplemental jurisdiction statute, 28 U.S.C. § 1367(a), provides, in pertinent part, as follows:

> [I]n any civil action of which the district courts have original jurisdiction, the district court shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy . . .

10. In the instant case, Plaintiff's state law claims are related to the same collection activity that forms the basis for Plaintiff's FDCPA claims. Thus, it is

clear that Plaintiff's state law claims in this case are "so related to claims in the action within [this Court's] original jurisdiction" that they form part of the same case or controversy and, as such, fall squarely within this Court's supplemental jurisdiction as provided under 28 U.S.C. § 1367(a). *See also* 28 U.S.C. § 1441(c) ("[w]henever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein . . .").

11. Moreover, this Court should exercise supplemental jurisdiction over Plaintiff's state law claims in this action in order to avoid an unnecessary duplication of judicial resources. *See Bensman v. CitiCorp Trust, N.A.*, 354 F. Supp. 2d 1330, 1333-34 (S.D. Fla. 2005) (citing *In re City of Mobile*, 75 F.3d 605, 607 (11th Cir. 1996)). In the instant case, Plaintiff's state law claims do not raise novel or complex issues of state law, do not predominate over Plaintiff's demand for relief under the FDCPA, and arise from the same transaction or occurrence. *See id.* (citing 28 U.S.C. § 1367(c)). It is therefore proper for this Court to exercise jurisdiction over all claims asserted in Plaintiff's Complaint.

IV. ADOPTION AND RESERVATION OF DEFENSES

12. Nothing in this notice of removal shall be interpreted as a waiver or relinquishment of any of Defendant's rights to assert any defense or affirmative

matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person; (2) improper venue; (3) insufficiency of process; (4) insufficiency of service of process; (5) improper joinder of claims and/or parties; (6) failure to state a claim; (7) the mandatory arbitrability of some or all of the claims; (8) failure to join indispensable parties; or (9) any other pertinent defense available under Ala. or Fed. R. Civ. P. 12, any state or federal statute, or otherwise.

V. PROCEDURAL REQUIREMENTS

13. This case is a civil action within the meaning of the Acts of Congress relating to the removal of cases.

14. True and correct copies of "all process, pleadings, and orders" filed to date are attached hereto as Exhibit "B" in conformity with 28 U.S.C. § 1446(a). There has been no other process, pleadings, or orders served upon Defendant to date in this case.

15. This notice of removal is filed within the time frame set forth in 28 U.S.C. § 1446.

16. Defendant has heretofore sought no similar relief.

17. The United States District Court for the Northern District of Alabama, Southern Division, is the court and division embracing the place where this action is pending in state court.

18. Contemporaneously with the filing of this notice of removal, Defendant has filed a copy of same with the clerk of the Circuit Court of Jefferson County, Alabama and a notice of filing notice of removal. Written notice of the filing of this notice of removal has also been served upon the Plaintiff.

19. Defendant reserves the right to supplement this notice of removal by adding any jurisdictional defenses which may independently support a basis for removal.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this Court take jurisdiction of this action and issue all necessary orders and process to remove this action from the Circuit Court of Jefferson County, Alabama, to the United States District Court for the Northern District of Alabama, Southern Division.

Respectfully submitted,

/s/ James S. Witcher
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Attorneys for Defendant City Wide Investigators, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of November, 2011, served a copy of the foregoing pleading on all counsel of record via United States mail, first-class postage prepaid, to-wit:

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